

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C). No. 22569 of 2012 (U)

PETITIONER(S):

**M.A.VELAYUDHAN, AGED 64 YEARS,
S/O.AYYAPPAN, MARATHAMPILLY HOUSE, THOTTIPPAL.P.O.,
PUTHUKKADE VIA, TRISSUR.**

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM. PIN-695 001.**
- 2. DISTRICT COLLECTOR,
THRISSUR DISTRICT, AYYANTHOLE, THRISSUR. PIN-680 003.**
- 3. ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT (ROAD DIVISION),
IRRINGALAKKUDA, THRISSUR DISTRICT. PIN-680 121.**
- 4. SUKUMARAN, AGED 53 YEARS,
S/O.RAMA MENON, VADAKKEPULLISSERIVEETIL,
THOTTIPPAL.P.O, PUTHUKKADE VIA, TRISSUR,
PIN-680 310.**
- 5. VINODHINI, AGED 49 YEARS,
W/O.SUKUMARAN, VADAKKEPULLISSERIVEETIL,
THOTTIPPAL.P.O, PUTHUKKADE VIA, TRISSUR,
PIN-680 310.**

**R4 & R5 BY ADVS. SRI.M.R.VENUGOPAL
SMT.DHANYA PASHOKAN
BY GOVERNMENT PLEADER SHRI NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-03-2015,
THE COURT ON 27-03-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE CERTIFICATE NO.K.DIS/C3-4965/09 DATED 17.2.2009.

P2:- COPY OF RATION CARD NO.1843137249

P3:- COPY OF THE ELECTRICITY BILL DATED 29.05.2012.

P4:- COPY OF THE JUDGMENT DATED 31.5.2011 IN I.S NO.951 OF 2010.

P5:- COPY OF THE COMPLAINT DATED 18.3.2013.

P6:- COPY OF THE ORDER RECEIPT DATED 2.4.2012.

P7:- COPY OF ENQUIRY REPORT NO.G3/A/13743/12/R DATED 1.6.2012.

P8:- CPY OF REQUEST NO.M-20/95 DATED 14.3.2012.

P9:- COPY OF NOTICE DATED 2.9.2012.

P10:- COPY OF PHOTOGRAPHS.

P11:- COPY OF REPRESENTATION DATED 26.9.2012.

P12:- COPY OF REPRESENTATION DATED 26.9.2012.

RESPONDENTS' EXHIBITS:-

R4(B):- COPY OF THE REPLY NO.B4-5301/2012 DATED 20.02.2013 FORWARDED TO THE PETITIONER BY THE UNDER SECRETARY TO GOVERNMENT WITH A COVERING LETTER DATED 11.4.2013.

KRJ

/True Copy/

PA to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.22569 of 2012

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Dated this the 27th day of March, 2015

JUDGMENT

Alleging that the petitioner and his family members were directed by the 3rd respondent to vacate the Government land in which they were residing for last 35 years, the petitioner has come up before this Court with this writ petition.

2. The petitioner is a daily wages worker whose family consists of 6 members, including school going children. The petitioner and family are residing in a building numbered by Parappukkara Grama Panchayat. The petitioner alleges that his residence is in three cents of Government land. Petitioner belongs to Schedule Caste as evident from Ext.P1 certificate.

3. The petitioner further alleges that he and his family were residing in the said residence for more than 35 years. Ext.P2 ration card and voter's identity card of the petitioner and family are in the

same address. Ext.P3 is the electricity bill. Respondents 4 and 5 are the neighbours. Both the families are in enimical terms and there are number of complaints and court cases between them.

4. It is alleged that the 5th respondent filed a suit for recovery of money against the petitioner's daughter on a forged demand promissory note. The said suit was dismissed with costs by Ext.P4 judgment. Since, the petitioner belonged to Scheduled Case (Pulaya) community, respondents 4 and 5 wanted to sent away the petitioner and family from the said place.

5. Therefore, the petitioner submitted Ext.P5 complaint before the Deputy Superintendent of Police. Thereupon on enquiry by the Superintendent of Police, Thrissur, the parties were directed to keep law and order. Ex.P7 is the enquiry report. The petitioner further alleges that because of personal vengeance, respondents 4 and 5 filed a complaint stating that the petitioner and family is residing in Government/Puramboke land. Therefore, the petitioner and family

has to be evicted by the authorities. On the basis of the complaint, the 3rd respondent issued Ext.P9 notice asking the petitioner and family to vacate the land and building within 48 hours. Ext.P10 series are the photographs of the petitioner's residence.

6. The grievance of the petitioner is that Ext.P9 notice is issued without giving him an opportunity of being heard. According to him it was issued arbitrarily and without any need or purpose for eviction and without providing any alternate place for accommodation for a landless and homeless family, belonging to a weaker section of the society. It is with this background, the petitioner has come up before this Court.

7. The 2nd respondent has filed a counter affidavit wherein it was contended as follows:

It is stated that Thottipal-Mulangu road is being taken over the PWD department. The petitioner's residence is fully situated in the PWD road puramboke comprised in Sy. Nos.495, 496/3, 4 of

Thottipal village. As his house is situated in front of the 4th respondent's property, the entrance to the aforesaid property is partly obstructed. The Taluk Surveyor has surveyed the PWD road puramboke and the sketch regarding the encroachment was forwarded to the Assistant Engineer, PWD Roads Section, Irinjalakuda for evicting the encroachment as directed from the office of the 2nd respondent. It is learnt that the PWD authorities had issued notice of eviction to the petitioner.

It was also revealed that Parappookara Grama Panchayat has issued 3 cents of land to the petitioner as per document no.6616/2006 of Nellai Sub Registrar Office. Financial assistance for constructing a permanent residence was also given to him by the panchayat authorities. However, no efforts were made by the petitioner to construct a new house and to vacate the PWD puramboke.

It is further stated that the 4th respondent has submitted a petition to the Government in the matter of encroachment of road

puramboke by the petitioner in front of his property and the same has been given to the 3rd respondent for necessary action. With respect to the request of the 3rd respondent, direction has been issued to the Tahsildar, Mukundapuram to demarcate the PWD road puramboke. The Taluk Surveyor has submitted the encroachment sketch to the PWD authorities for evicting the encroachment.

It is further stated that under Kerala Land Conservancy Act, PWD authorities are competent to evict encroachments from PWD puramboke and hence issued notice by the 3rd respondent. Land might be required for widening the road and patta for PWD road puramboke can be issued only on receiving No Objection Certificate from the PWD authorities. In this case, the petitioner cannot be considered as landless as he is possession 3 cents of land as per the aforesaid document of Nellai Sub Registry.

8. Respondents 4 and 5 have filed a counter affidavit as well as additional counter affidavit wherein they have contended as follows:

In the year 2008-09 the petitioner has applied before the Parappukkara Grama Panchayat for getting three cents of land and financial aid for constructing a house therein. Subsequently, he was allotted with a financial aid of ₹75,000/- in the year 2008-09 from the Scheduled Caste Development Office. Based on the said application, the petitioner was given three cents of land in Sy. No.424 of Thoppil village and the petitioner has started construction of a house in the said three cents of land. According to them, the petitioner has accepted an sum of ₹33,750/- in two installments also. Respondents 4 and 5 came to know this from a reply to a query from the Public Information Officer of Irinjalakkuda block panchayat as per Ext.R4 (a). The copy of the title deed in the name of the petitioner was also issued to them along with Ext.R4(a).

They further state that the petitioner has approached this Court suppressing the real facts and without disclosing the real facts. The real intention of the petitioner is to withhold the Government

land without any authority. According to them, the petitioner has approached this Court without clean hands.

9. Arguments have been heard.

10. It is an admitted case that the property wherein the petitioner is residing is belonging to the Government. The case of the petitioner is that before issuing Ext.P9 notice, no opportunity was given to him. According to him, it is at the influence of respondents 4 and 5 that the action was initiated against him. According to the petitioner, if he is evicted from the land, he and his family members would be virtually thrown to street.

11. It was argued by the learned counsel for the petitioner that there is no urgent need to get the petitioner's land vacant, as no plan of development is proposed using the said land. In the writ petition, the petitioner has undertaken to vacate the land, if any project of public purpose is envisaged and the petitioner's land is required for the same.

12. The learned counsel for respondents 4 and 5 would contend that the petitioner has encroached upon a road puramboke in front of his house and the said encroachment obstructs the entrance to the house of the 4th respondent.

13. According to the Government Pleader, on a measurement by the Taluk Surveyor at the instance of the PWD authorities, it was seen that the petitioner has encroached upon certain portions of the Government property and the present action was taken by the PWD authorities for removal of encroachment. The PWD authorities are competent to evict the encroachment and that is the reason why Ext.P9 notice was issued.

14. Before issuing Ext.P9, there is no need to hear the petitioner because it is open to him to submit his objections, if any, against Ext.P9 before the authorities who had issued the same. The contesting respondent, including the State has a case that Parappukkara Grama Panchayat has issued three cents of land as per

Document No.6610/2006 of Nellai Sub Registrar's Office. However, no efforts were made by the petitioner to construct a residential house and to vacate the PWD puramboke.

15. The learned counsel for respondents 4 and 5 would submit that the 4th respondent had filed a complaint before the Public Grievance Redressal Cell of the Chief Minister of Kerala regarding the encroachment of public road lying in front of their house. In the said complaint, the District Collector by reply dated 20.2.2013 replied to the under Secretary. A true copy of the same was forwarded to the petitioner by the Under Secretary to the Government with a covering letter dated 11.4.2014. True copy of the reply is produced by the 4th respondent as Ext.R4(b). In Ext.R4(b) it is stated that, for rehabilitation of the petitioner's family, the panchayat has given three cents of land. Financial assistance was also given to the petitioner. However, the petitioner has constructed only the foundation of the building in the said property.

16. Since the petitioner is the unauthorized occupier of the land belonging to the Government, it is open for the Government to proceed against him, in accordance with law, and the same cannot be curtailed by a proceedings under Article 226 of the Constitution of India.

Therefore, this Court finds no merit in the writ petition. Accordingly, the writ petition fails and it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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